

STATE OF INDIANA     )  
                              ) SS:  
COUNTY OF MARION    )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: IDOI-1711-CO05-1213-02

IN THE MATTER OF:

ISTA INSURANCE TRUST, Respondent  
150 W. Market Street  
Indianapolis, IN 46204  
Respondent

Type of Agency Action: Enforcement

**FILED**

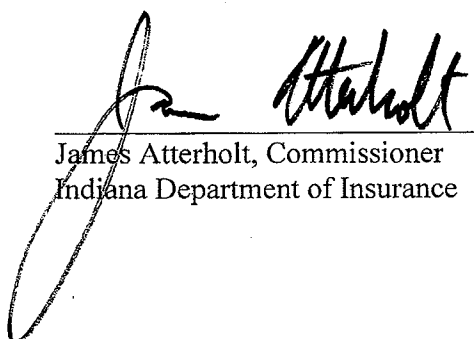
APR 01 2009

STATE OF INDIANA  
DEPT. OF INSURANCE

**AMENDED FINAL ORDER**

The Commissioner of Insurance now being duly advised of Respondent's request for an extension of time now grants the same and amends the prior final order dated February 10, 2009, only as to the date of registration, as referenced in paragraphs 2 and 3 of the "Trust's Agreements" portion of the Immediate Interim Agreement (attached as Exhibit A to the prior final order), by extending the date of registration from April 1, 2009 to May 2, 2009.

SO ORDERED THIS 1 DAY OF April, 2009.

  
James Atterholt, Commissioner  
Indiana Department of Insurance

Distribution:

Carol A. Mihalik, Esq.  
Chief Deputy Commissioner  
INDIANA DEPARTMENT OF INSURANCE  
Enforcement Division  
311 West Washington Street, Suite 300  
Indianapolis, IN 46204

ISTA INSURANCE TRUST  
150 W. Market Street  
Indianapolis, IN 46204

STATE OF INDIANA )  
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COUNTY OF MARION )

BEFORE THE INDIANA  
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150 W. Market Street )  
Indianapolis, IN 46204 )  
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DEC 10 2009

STATE OF INDIANA  
DEPT. OF INSURANCE

Type of Agency Action: Enforcement )

**FINAL ORDER**

The Indiana Department of Insurance ("Department") and ISTA ("Respondents"), signed an Interim Agreement which purports to resolve all issues concerning the continuing operations of the Trust and MEWA registration.

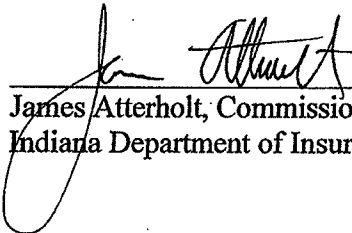
The Commissioner, after reviewing the Interim Agreement, finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Commissioner hereby incorporates the Interim Agreement and its terms and conditions as if fully set forth herein, and approves and adopts in full the Interim Agreement as a resolution of this matter and as attached as EXHIBIT "A".

IT IS NOW ORDERED, ADJUDGED AND DECREED:

1. The Commissioner has subject matter jurisdiction over the matters at issue in this administrative proceeding and personal jurisdiction over the respondents.

2. Respondents were represented by legal counsel, understand the terms and scope of this Interim Agreement and voluntarily entered into this Interim Agreement without duress and waive their right to a hearing on the matter and this Order.
3. Respondents understand that failure to comply with the Agreement and resulting Order may result in further administrative consequences or civil actions that could include but is not limited to revocation of licenses, fines or claims, for violation of a Commissioner's Order pursuant to Ind. Code § 27-1-15.6 et seq., Ind. Code § 27-4-4 et seq., and Ind. Code § 27-4-5-2.

ALL OF WHICH IS ORDERED THIS 10 day of February, 2009.

  
James Atterholt, Commissioner  
Indiana Department of Insurance

**Distribution:**

Carol A. Mihalik, Esq.  
Chief Deputy Commissioner  
INDIANA DEPARTMENT OF INSURANCE  
Enforcement Division  
Suite 300  
311 West Washington Street

ISTA INSURANCE TRUST  
150 W. Market Street  
Indianapolis, IN 46204

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE  
CAUSE NUMBER: IDOI-1711-CO05-1213-025

## IMMEDIATE INTERIM AGREEMENT

**RECITALS**

WHEREAS, the Department and the Trust entered into an Agreed Entry which was adopted by Final Order effective as of January 24, 2006, hereinafter referred to as "Agreed Entry

# EXHIBIT

A

Final Order", that governed the Trust's compliance with portions of the Department's Multiple Employer Welfare Arrangement ("MEWA") regulations set forth in Ind. Code § 27-1-34 et seq. and 760 IAC 1-68 without conducting a formal hearing as to the applicability of those regulations to the Trust; and

WHEREAS, said Final Order has, by its terms, expired; and

WHEREAS, the Parties are in the process of resolving the regulatory status of the Trust vis-à-vis the MEWA regulations set forth in Ind. Code § 27-1-34 et seq. and 760 IAC 1-68 in a form and manner that will supersede and nullify the aforementioned Agreed Entry Final Order, with the health portion of the Trust ultimately registering with the Department as a MEWA in accordance with Ind. Code § 27-1-34 et seq. and 760 IAC 1-68; and

WHEREAS, it is the intent of the Trust to register as a MEWA, with respect to the health portion thereof; and

WHEREAS, the Parties wish to document their regulatory relationship in writing until such time as the Trust's MEWA registration has been accepted by the Department;

NOW, THEREFORE, in order to implement the understandings of the Parties hereinabove set forth, the Parties agree as follows:

#### TRUST'S AGREEMENTS

1. The Trust will work and cooperate with the Department, and with its examination team, on a plan of action intended to result in the registration of the health benefits portion of the Trust as a MEWA (hereinafter referred to as "subtrust"). The Trust will pay the costs of the examination team in connection with this activity.

2. The Trust will develop, in cooperation with the Department, an amended and restated Trust that will bifurcate its assets and liabilities into a separate health benefits subtrust that will hold the assets to be used exclusively for funding health benefits, with the remaining assets of the Trust to be used for the funding of other benefits. The Trust will register the health benefits subtrust portion of the amended and restated Trust as a MEWA with the Department as soon as administratively feasible, but no later than April 1, 2009.

3. As of the date specified in paragraph 2, the health benefits subtrust established pursuant to paragraph 2 will have submitted a completed registration to the Department that reflects full compliance with the MEWA statute and regulations.

4. The Trust agrees to provide sufficient funding in the health subtrust of the amended and restated Trust to cover all reported and incurred-but-not-reported ("IBNR") claims liabilities under the health plans that are being funded through the health subtrust as of the effective date of the Trust's amendment and restatement.

5. Any claim stabilization reserves ("CSR") accumulated by the health plans under the operation of the Trust prior to its amendment and restatement to effect the creation of the health benefits subtrust will be credited to the respective Adopting Employer's account under the general Trust upon the effective date of the Trust's amendment and restatement and will be transferred to the health benefits subtrust to fund claims in accordance with the terms of the applicable funding agreement for the plan.

6. Health plans currently being funded under the Trust operate on the basis of a one-year funding period (i.e., rates are established for a one-year period) that varies among the health plans. Effective with renewal periods beginning on and after April 1, 2009, funding for health plans will be transferred out of the general assets of the Trust and into the health subtrust under the amended and restated Trust, with the result that all health plans will be funded out of the health subtrust no later than March 31, 2010.

7. As of the date of this agreement, the subtrust will have no legal obligation to the Trust on an ongoing basis.

8. Funding for IBNR claims and known but unpaid claims and CSR will be at an amount, nature, and type satisfactory to the Department as of April 1, 2009.

9. The Trust will advise and alert all applicable participants of their liability pursuant to 760 IAC 1-68-15 as follows:

*Sec. 15. (a) The liability of each employer participant for the obligations of the MEWA is joint and several.*

*(b) Each employer participant has a contingent assessment liability pursuant to this section for payment of actual losses and expenses incurred while the participation agreement was in force.*

*(c) Each participation agreement or contract issued by the MEWA must contain a statement of the contingent liability of employer participants. Both the application for participation and the participation agreement must contain, in contrasting color and not less than twelve (12) point type, the statement, "This*

*is a fully assessable contract. In the event (the MEWA) is unable to pay its obligations, participating employers will be required to contribute through an equitable assessment the money necessary to meet any unfulfilled obligations."*

In the event of a failure to register, The Trust further understands that further consequences may be imposed pursuant to Ind. Code § 27-4-5-2(c) 2 which states

*In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract is liable to the insured for the full amount of the claim or loss in the manner provided by the insurance contract.*

#### DEPARTMENT'S AGREEMENTS

1. It is not the intent of the Department to impact the Trust's asserted status as a VEBA, so long as that status does not limit or otherwise interfere with ISTA's ability to complete registration as a MEWA subject to the Department's jurisdiction within Ind. Code § 27-1-34 et seq. and;
2. The examiners will report to the Department the status of the reinsurance contracts, and will advise as to any conditions within the contracts that would impact registration or otherwise provide the basis for a conditional registration.
3. The Department agrees that all long-term disability plans currently being funded under the Trust are ineligible to being transferred to the Health sub trust and are not subject to regulation by the Department under Ind. Code § 27-1-34 et seq. and 60 IAC -1-68.
4. The examiners will advise the Department as to the status of registration no later than March 27, 2009.

#### MUTUAL AGREEMENT

The parties agree that this Agreement is effective as soon as approved and adopted as a final order by the Commissioner.

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EXECUTION

The undersigned representatives of each Party to this Agreement, being fully informed and having the ability to bind his or her respective Party, do hereby execute this Agreement, to be effective as of the 9<sup>th</sup> day of February, 2009.

2/9/09  
Date Signed

Warren L. Williams  
Warren L. Williams,  
CEO of the Trust

2/09/09  
Date Signed

Carol Ann Mihalik  
Carol Ann Mihalik, Esq., Attorney for the Department

STATE OF INDIANA )

) SS:

COUNTY OF MARION )

Before me, a Notary Public for Marion County, State of Indiana, personally appeared Warren L. Williams, CEO of the ISTA Insurance Trust and being first duly sworn by me upon his oath, says that the facts alleged in the foregoing instrument are true.

Signed and sealed this 9 day of February, 2009.

Melda A. Corn  
Signature

Melda A. Corn  
Printed

My Commission Expires: 11-28-12

County of Residence: Hamilton